

The Flinn Report

Illinois

Regulation

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Joint Committee on Administrative Rules

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Illinois Regulation is a summary of the weekly regulatory decisions of State agencies published in the Illinois Register and action taken by the Illinois General Assembly's Joint Committee on Administrative Rules. Illinois Regulation is designed to inform and involve the public in changes taking place in agency administration.

New Regulations

CHILD CARE

The DEPARTMENT OF HUMAN SERVICES adopted an amendment to "Child Care" (89 Ill Adm Code 50; 31 Ill Reg 13270), effective 3/31/08, that implements Public Act 95-206. A companion emergency rulemaking published at 31 Ill Reg 13350 became effective 9/10/07. The statute and the rulemaking set the maximum child care eligibility income threshold at 185% of the current federal poverty level for each family size beginning in fiscal year 2008. (For example, the gross income threshold for an Illinois family of 4 would be \$3,184 per month.) Parents and other relatives eligible to receive child care services include: Temporary Assistance for Needy Families (TANF) recipients participating in work and training activities who have been approved for child care benefits and who meet the monthly income eligibility thresholds; working families, including teen parents while they attend school to obtain a high school degree or its equivalent, whose monthly incomes do not exceed income eligibility thresholds; families who do not receive TANF and need child care services in order to attend school or training and whose monthly income does not exceed the monthly income threshold; and rela-

tives (other than parents) who receive child-only TANF or General Assistance (GA) benefits as representative payee for children in need of care while the relatives work outside the home. Child care services recipients must be Illinois residents.

Questions/requests for copies: Tracie Drew, DHS, 100 S. Grand Ave. E., 3rd Fl., Springfield IL 62762, 217/785-9772.

RIVER EDGE REDEVELOPMENT

The ENVIRONMENTAL PROTECTION AGENCY adopted a new Part titled "Review of Remediation Costs for River Edge Redevelopment Zone Site Remediation Tax Credit" (35 Ill Adm Code 888; 31 Ill Reg 13053), effective 3/26/08, to implement Public Act 95-454. The rulemaking specifies the procedures that must be followed in East St. Louis, Aurora, and Rockford by a remediation applicant to obtain EPA review and approval of remediation costs before applying for the applicable tax credit. (The tax credit is given for business assets used in river edge redevelopment zones.) Topics covered include budget plan review, fees, remediation cost components, and ineligible costs. Small businesses affected by this rulemaking include

(cont'd next page)

Proposed Regulations

MERCURY PRODUCTS

The ENVIRONMENTAL PROTECTION AGENCY proposed amendments to "Procedures for Review of Petitions for Mercury Product Exemptions" (35 Ill Adm Code 182; 32 Ill Reg 4901) to implement Public Act 95-87, which prohibits the sale of certain mercury-added products (products to which mercury is added intentionally during formulation or manufacture or products containing one or more components to which mercury is intentionally added during formulation or manufacture) unless the manufacturer applies for and receives a 5-year exemption from EPA. The rulemaking provides definitions, exemption petition requirements, public notice publication and comment time frames, possible Agency actions, and appeal procedures. In addition, exemption renewal guidelines are provided. EPA is also allowed, prior to approving any exemption, to consult with other states to promote consistency in regulating products for which an exemption is requested. Mercury-added product manufacturers are affected by these rules.

Questions/requests for copies/comments through 5/27/08: Kyle Rominger, EPA, 1021 N. Grand Ave. E., Springfield IL 62794-9276, 217/782-5544, Fax 217/782-9807.

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NEW REGULATIONS: Rules adopted by agencies this week.

PROPOSED REGULATIONS: Rules proposed by agencies this week, commencing a 45-day First Notice period. Public comments must be accepted by the agency for the period of time indicated.

☞: Symbol designating rules of special interest to small businesses, small municipalities, and not-for-profit corporations. Agencies are required to consider comments from these groups and minimize the regulatory burden on them.

QUESTIONS/COMMENTS/RULE TEXT: Direct mail or phone calls to the agency personnel listed below each summary. Providing volume and issue number of The Flinn Report or the Illinois Register will expedite the process. Some agencies charge copying fees. However, copy requests do not have to be made under the Freedom of Information Act.

New Regulations

those remediating certain contaminated properties that wish to apply for the tax credit.

Questions/requests for copies: M. Kyle Rominger, EPA, 1021 N. Grand Ave. E., Springfield IL 62794-9276, 217/782-5544.

INCOME TAX

The DEPARTMENT OF REVENUE adopted an amendment to "Income Tax" (86 Ill Adm Code 100; 31 Ill Reg 16428 and 16695 and 32 Ill Reg 97), effective 3/25/08, providing guidance concerning the application of apportionment of insurance companies' income. Income will be apportioned to Illinois by multiplying business income by a fraction, the numerator of which is the amount of premiums written for insurance or reinsurance on property in Illinois and the denominator of which is the amount written everywhere. Only direct premiums, consideration for annuity contracts, and assessments against mutual policyholders are reflected in business income. Further changes define gross income, adjusted gross income, taxable income, and base income. The rulemaking additionally describes the treatment of modifications to adjusted gross income or taxable income in computing net income subject to Illinois tax,

thereby resolving the differences between the federal income tax provisions and State income tax provisions. Other amendments classify all income as business income except compensation or deductions allocable to compensation and eliminate text that describes the apportionment of income to unitary businesses because Section 9700 of the Illinois Income Tax Act now governs that activity. Additional amendments add statutory text that requires the reclassification of income found to be business income that was originally treated as non-business income. The only change since 1st Notice is that 3 separately proposed rulemakings are combined to create this one adopted rulemaking. Businesses may be affected by portions of this rulemaking.

Questions/requests for copies: Paul Caselton, DOR, Legal Services Office, 101 W. Jefferson, Springfield IL 62794, 217/524-3951.

STATE EMPLOYEES

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES adopted peremptory amendments to "Pay Plan" (80 Ill Adm Code 310; 32 Ill Reg 6097), effective 3/25/08, implementing 4 memoranda of understanding (MOU) and one collective bargaining agree-

ment. The security therapy aide IV title is removed from merit compensation and assigned to a bargaining unit pursuant to an MOU between DCMS and the American Federation of State, County and Municipal Employees (AFSCME). Also, pursuant to an AFSCME MOU, a new title, clinical psychology associate, is assigned to a bargaining unit. The third MOU with AFSCME assigns the public service administrator-option 80 (occupational therapist) to a bargaining unit. The position also remains in merit compensation. A new classification of fire prevention inspector trainee is assigned to a bargaining unit pursuant to an MOU between DCMS and the Illinois Federation of Public Employees. Finally, pursuant to a collective bargaining agreement between DCMS and the International Brotherhood of Boiler Makers – Iron Shipbuilders, Blacksmiths, Forgers, and Helpers, the current prevailing wage rate for boiler safety specialist receives an additional 4% increase above the recently announced prevailing wage rates by the Illinois Department of Labor for the northern region.

Questions/requests for copies: Jason Doggett, DCMS, 504 Stratton Bldg., Springfield IL 62706, 217/782-7964, Fax 217/524-4570, e-mail: CMS.PayPlan@Illinois.gov

Proposed Regulations

HAZARDOUS & SOLID WASTE

The POLLUTION CONTROL BOARD proposed amendments for "RCRA Permit Program" (35 Ill Adm Code 703; 32 Ill Reg 4915), "Hazardous Waste Management System: General" (35 Ill Adm Code 720; 32 Ill Reg 4970), "Identification and Listing of Hazardous Waste" (35 Ill Adm Code 721; 32 Ill Reg 5030), "Standards Applicable to Generators of Hazardous Waste" (35 Ill Adm Code 722; 32 Ill Reg 5174), "Standards Applicable to Transporters of Hazardous Waste" (35 Ill Adm

Code 723; 32 Ill Reg 5216), "Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities" (35 Ill Adm Code 724; 32 Ill Reg 5228), "Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities" (35 Ill Adm Code 725; 32 Ill Reg 5429), "Standards for the Management of Specific Hazardous Waste and Specific Types of Hazardous Waste Management Facilities" (35 Ill Adm Code 726; 32 Ill Reg 5605), Standards for Owners and Operators

of Hazardous Waste Facilities Operating Under a RCRA Standardized Permit (35 Ill Adm Code 727; 32 Ill Reg 5685), "Land Disposal Restrictions" (35 Ill Adm Code 728; 32 Ill Reg 5697) and "Standards for the Management of Used Oil" (35 Ill Adm Code 739; 32 Ill Reg 5904). The rulemakings update hazardous waste and solid waste rules to reflect certain federal amendments adopted by the federal Environmental Protection Agency (USEPA) during the period from 3/4/05 through 7/28/06. Amendments to Parts 720, 722, 723, 724 and 725 standardize the

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content and appearance of the manifest and continuation sheet, make the forms available from a greater number of sources, and adopt new procedures for tracking specified types of waste shipments with the manifest. Amendments to Parts 703, 720, 721, 724, 725, 726, and 728 streamline hazardous waste generation and management recordkeeping and reporting requirements. Amendments to Parts 703, 720, 721, 722, 724, 725, 726, 727, 728 and 739 correct errors resulting from printing omissions, typographical errors, misspellings, and similar mistakes. Amendments to Parts 720 and 721 define cathode ray tube (CRT), CRT collector, CRT glass manufacturer, and CRT processing and exclude CRTs from the definition of solid waste if specified conditions are met. Those affected by these rulemakings include entities that generate, transport, treat, store, or dispose of hazardous waste.

Requests for copies/comments concerning the 11 rulemakings above until 5/27/08: John Therriault, PCB, 100 W. Randolph, Ste. 11-500, Chicago IL 60601, 312/814-3620. Questions: Michael J. McCambridge at the same address, 312/814-6924, e-mail: mccambm@ipcb.state.il.us. Please reference consolidated docket R07-5/R07-14.

AGENCY NAME CHANGE

The ILLINOIS EMERGENCY MANAGEMENT AGENCY proposed amendments to "Registration and Reporting Requirements for Radiation Machine Service Providers" (32 Ill Adm Code 322; 32 Ill Reg 4863) and Licensing Requirements for Source Material Milling Facilities (32 Ill Adm Code 332; 32 Ill Reg 4869) to reflect Executive Order 12's transfer of the Department of Nuclear Safety to IEMA in 2003. The amendments change agency name references from DNS to IEMA.

Requests for copies/comments through 5/27/08: Kevin T. McLain, IEMA, 1035 Outer Park Dr., Springfield IL 62704,

217/524-0770, TDD 217/782-6133.

TEACHERS' RETIREMENT

The TEACHERS' RETIREMENT SYSTEM proposed amendments to "The Administration and Operation of the Teachers' Retirement System" (80 Ill Adm Code 1650; 32 Ill Reg 5972). The rulemaking broadens the permissible methods of proof of salary (besides payroll records and other documents already in rule) to include "other contemporaneous documentation" that reliably supports the service credit to be established. The rulemaking eliminates a salary valuation method employed by the System in certain cases (the member's first full-time salary is applied to a previous part-time period for which salary information is unavailable) and repeals outdated early retirement incentive provisions. Disability application procedures are amended to require written notice to the System, rather than filing by letter or telefax transmission. Also, narrative explanations of disability benefit payment provisions are replaced by flow charts, and driver's licenses and income tax returns are deemed acceptable for proof of age and evidence of marriage, respectively. The rulemaking repeals the mortality table employed by the System in determining "actuarial equivalent" (a benefit or sum of equal value to another benefit or sum when computed on the basis of mortality tables and interest rates adopted by the System board) as defined in statute. The rule reaffirms longstanding policy that the 5-year period for payment of upgrading service credit may be extended due to suspension of a payroll deduction agreement. Statements for an account receivable, account payable, refund or other transaction involving a deficiency, payment, or credit of less than \$50 are no longer required unless demanded by an annuitant, member, beneficiary, or employer. Specific provisions of the federal Internal Revenue Code governing a rollover of a distribution from or into the System into an IRA, annuity, etc., are stricken and replaced with the phrase as defined "by federal

law", and an alternate payee under a valid Qualified Illinois Domestic Relations Order (QILDRO) will now be an eligible recipient of a rollover distribution. Provisions governing treatment of pension status for members re-entering teaching are proposed to be repealed. The rulemaking also repeals provisions governing reduction of a survivor's benefit to meet the ceiling amounts prescribed by the Pension Code (30% of the decedent's average salary). Hearings concerning use of the Comptroller's offset are proposed to be heard by a 3-member panel appointed by the System's director instead of the 3 named positions currently in rule (the System's controller, deputy director of benefits, and manager of accounting). Administrative hearing procedures are clarified, also.

Questions/requests for copies/comments through 5/27/08: Cynthia Fain, Teachers' Retirement System, 2815 W. Washington, Springfield IL, 62794-9253, 217/753-0375.

INCOME TAX

The DEPARTMENT OF REVENUE proposed amendments to "Income Tax" (86 Ill Adm Code 100; 32 Ill Reg 5936) providing guidance on the treatment of income of an investment partnership. Effective 12/31/04, income from an investment partnership is exempt from Illinois income tax. At least 90% of the partnership's assets must be in deposits at financial institutions, investment securities, and office space and equipment necessary to carry on its activities as an investment partnership, and not less than 90% of its income must be from interest, dividends, and gains from sales or exchanges of "qualifying interest securities" (e.g., bonds, equities, currency deposits and currency exchange contracts and futures, mortgage or asset-backed government securities, repurchase agreements, index securities and futures contracts, options, commodities, derivatives, or a partnership in another investment partnership). Any loans and uninsured bank deposits are not eligible. The rulemaking

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also defines cost of assets, gross income, dividend, interest, and gain from sale or exchange.

SALES TAXES

DOR also proposed an amendment to "Service Occupation Tax" (86 Ill Adm Code 140; 32 Ill Reg 5956) detailing the treatment of seminar materials. Seminar materials transferred to persons as part of their attendance at a seminar are considered service occupation tax (SOT) transactions on the part of the presenter and use tax on the part of the attendee. If the transfer

occurs without required attendance, the transaction is subject to retailers' occupation tax. Service use tax (SUT) is not involved because the presenter is considered to be a de minimus serviceman who under the SOT Act is not subject to SUT because the cost ratio between the tangible personal property transferred incident to sales of service and the serviceman's total annual gross receipts from all sales of service is less than 35%. The presenter is also liable for use tax (UT) on items typically offered free of charge (e.g., coffee) at seminars. Not-for-profit organizations are exempt from

liability for items conducive to their purpose. The rulemaking also references when not-for-profit organizations' transactions are subject to ROT, UT, or SOT and provides examples. Any entity providing seminars may be affected.

Questions/requests for copies/comments concerning the 2 DOR rulemakings above through 5/27/08: Paul Caselton (217/524-3951) for Part 100 and Jerilynn G. Troxell (782-2844) for Part 140, DOR, Legal Services Office, 101 W. Jefferson, Spfld. IL 62794.

Second Notices

The following rulemakings were moved to second notice this week by the agencies listed below, commencing the JCAR review period. The ESRB and DOL rulemakings will be considered at JCAR's April 15, 2008 meeting in Springfield, and the DOR, DCMS, and DPH rulemakings will be considered at the May 20th meeting in Springfield.

ELEVATOR SAFETY REVIEW BOARD

"Illinois Elevator Safety Rules" (41 Ill Adm Code 1000) proposed 11/30/07 (31 Ill Reg 15902)

DEPARTMENT OF LABOR

"Day and Temporary Labor Services Act" (56 Ill Adm Code 260) proposed 1/4/08 (32 Ill Reg 11)

DEPARTMENT OF REVENUE

"Lottery (General)" (11 Ill Adm Code 1770) proposed 1/25/08 (32 Ill Reg 1071)

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

"Access to Information" (2 Ill Adm Code 751) proposed 9/21/07 (31 Ill Reg 13261)

DEPARTMENT OF PUBLIC HEALTH

"Illinois Home Health, Home Services, and Home Nursing Agency Code" (77 Ill Adm Code 245) proposed 8/3/07 (31 Ill Reg 11168)